

APPEAL NO. 023294
FILED JANUARY 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 2, 2002. The hearing officer determined the appellant's (claimant) compensable right knee injury includes right knee chondromalacia but does not include "ligament tears or other right knee pathology except for chondromalacia"; that the claimant did not have disability "at any time beginning April 11, 2002, through the date of the [CCH]"; and that there was no proper reason to approve the claimant's request to change treating doctors from Dr. SB to Dr. S.

The claimant appeals in a "conditional" appeal (appeal was not conditional), disagreeing with some of the hearing officer's determinations, asserting that he had further disability, and that the Texas Workers' Compensation Commission (Commission) had not abused its discretion in approving the change of doctor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable right knee injury on _____, and that the claimant had right knee surgery on October 3, 2001. It is not disputed that a functional capacity evaluation was performed on March 18, 2002, and that Dr. SB, the claimant's then-treating surgeon, released the claimant to return to work full duty on April 11, 2002. The claimant began seeing Dr. S on April 9, 2002. Dr. S placed the claimant "on temporary total disability" on April 9, 2002. The claimant, at the CCH, testified, on more than one occasion, that had he known that Dr. S was a chiropractor, "he would never have even asked to change to him." It is undisputed that the claimant had a fall walking down some stairs at his home on May 9, 2002. The claimant contends that the fall was a follow-on injury resulting from his compensable _____ injury. In evidence were reports from right knee MRI's taken both before and after the May 9, 2002, fall.

The hearing officer summarized the evidence, including the results from two MRI's, in some detail. The hearing officer also explained how he arrived at his decision that the Commission abused its discretion in approving the change of treating doctor. Insofar as the evidence was in conflict, the 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the

overwhelming weight of the evidence as to be clearly wrong and unjust. Campos; Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Terri Kay Oliver
Appeals Judge